IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Criminal Misc. No.586-MA of 2006
Date of Decision: November 23, 2006

State of Haryana

.....Appellant

VERSUS

1.Jasbir @ Nanha son of Om Parkash aged 22 years resident of Village Siwah, District Panipat.
2.Suresh @ Sesi son of Om Parkash aged 27 years resident of Village Siwah, District Panipat.
3.Parveen @ Minna son of Sat Pal Singh aged 24years resident of Village Siwah, District Panipat.

.....Respondents

CORAM:- HON'BLE MR.JUSTICE K S GAREWAL
HON'BLE MR.JUSTICE R S MADAN

PRESENT: Mr.PS Sullar, Deputy Advocate General, Haryana.

R S MADAN, J.

By this order we propose to dispose of Criminal Misc.No.586-MA of 2006, which has arisen out of the judgment dated 26-04-2006 rendered by the Additional Sessions Judge, Panipat in a Sessions case No.65 of 2005 whereby he acquitted all the accused under Sections 398 and 401 of the Indian Penal Code and one accused-Jasbir @ Nanha was acquitted of the charges under Section 25 of the Arms Act, 1959.

In brief, the facts of the case are that on 2-10-2004 Assistant Sub Inspector Ishwar Singh alongwith Assistant Sub Inspector

Surat Singh and other police officials was returning after patrolling and checking of crime in the area of police station Bapoli and police station Chandni Bagh, Panipat in a Government vehicle bearing No.HR-06D/6041 driven by Constable Ram Niwas when the police party reached Sanoli Road T point HUDA bypass, he received secret information that accused Jasbir @ Nanha, Suresh @ Sesi and Parveen @ Minna, who were armed with illegal weapon, iron rod and iron pipe were having stolen Motor Cycle and were trying to rob passers by near MJR Public School, HUDA bypass chowk and if raid were conducted, they could be apprehended red handed. The police party made efforts to join members of public as witnesses but they expressed inability. Red light of the vehicle was removed from the Government vehicle so as to conceal the identity of the police vehicle. When the police party reached near MLR Public School, they spotted three persons having Motor Cycle who brought their Motor Cycle in front of their vehicle due to which Government vehicle stopped. One of those persons subsequently identified as Jasbir @ Nanha, came to the window towards driver side and second of the persons armed with iron pipe subsequently identified as Parveen @ Minna went towards conductor side and third of the persons subsequently identified as Suresh @ Sesi stood with iron rod in front of the vehicle and the person armed with pistol exhorted his co-accused to rob all the occupants. On seeing the police party in the vehicle, the accused started running on which they were overpowered by the police party. On their personal search, one country made pistol .315 bore loaded with one live cartridge was recovered from accused-Jasbir @ Nanha,one iron pipe was recovered from accused Parveen@ Minna and iron rod was recovered from accused Suresh @ Sesi. All these articles were converted into sealed parcels

and were taken into possession vide various memos. The motor-cycle No.HR-06J-3869 was also taken into possession. Ruqa was sent to the Police Station Chandi Bagh, Panipat on the basis of which FIR No.378 dated 02-10-2004 was registered. The accused were arrested and were put behind the bars and the case property was handed over to the Mohrir Head Constable of the police station. In due course of time, the pistol was sent to the Forensic Science Laboratory, Haryana, Madhuban.

After recording the statements of witnesses and completion of the investigation of the case, challan against the accused was presented in the Court of Illaqa Magistrate.

On appearance of the accused before the Court of the learned Additional Sessions Judge, Panipat, the accused were charged for the commission of offence under Sections 398/401 of the Indian Penal Code whereas charge under Section 25 of the Arms Act, 1959 was framed against accused Jasbir @ Nanha. The aforesaid charges were read over and explained to the accused, to which they pleaded not guilty and claimed trial.

To prove its case, the prosecution relied upon the testimony of 9 witnesses i.e. PW1-Constable Ramesh Chander; PW2-Head Constable Dharam Singh; PW3-Constable Jagbir Singh Draftsman; PW4-Assistant Sub Inspector Surat Singh;PW5-Sub Inspector Zile Singh; PW6-Madan Lal Sethi Deputy Superintendent; PW7-Assistant Sub Inspector Vijay Singh; PW8-Assistant Sub Inspector Ishwar Chand and PW9-Vijay Kumar Jindal, Record Keeper and closed the case of the prosecution.

After the case of the prosecution was closed, the statements of the accused were recorded under Section 313 of the Code of Criminal Procedure, in which the entire incriminating evidence was put to

them, to which they denied and pleaded false implication.

No evidence was led in defence by the accused and the defence evidence was closed as per their statements recorded in this regard.

On appraisal of the evidence, the learned Additional Sessions Judge, Panipat did not find favour with the prosecution version and acquitted the accused by giving them the benefit of doubt.

Heard.

The learned Additional Sessions Judge, Panipat observed that despite the fact that independent witness was available and ample opportunity was with the prosecution, no independent witness was associated in the raiding party. The Investigating Officer did not disclose the name of the witnesses in the Zimni, who refused to join the investigation nor the Investigating Officer had taken any action against them. Another material fact, which was noticed by the trial Court was with respect to the material contradictions, which appeared in the statements of the prosecution witnesses as high-lighted in para No.16 of the judgment of the trial Court which renders the case of the prosecution doubtful.

The learned trial Court further held that the prosecution story sounds unnatural and improbable. The police party tried to disguise their identity by removing the red light from the Government vehicle but it is admitted by the Assistant Sub Inspector Ishwar Singh (PW8) as well as PW4-Assistant Sub Inspector Surat Singh that they were in police uniform. Besides them, there were other police officials who were also in uniform. Therefore, in such a situation, it could not be expected from the accused to have stopped the police vehicle for the purpose of committing robbery. It is also clear that no currency notes were recovered from the possession of the

accused during their personal search which further renders the case of the prosecution doubtful that the accused had not assembled there to commit the crime of robbery.

It is also noticed by the trial Court that the prosecution has not produced any cogent and reliable oral as well as documentary evidence to prove that the accused belonged to any wandering or other gang of persons associated for the purpose of habitually committing theft or robbery.

After high-lighting the contradictory statements appearing in the testimony of the official witnesses as well as that no currency notes were recovered from the possession of the accused, the case of the prosecution was dis-believed as unnatural and improbable because no person who was to commit a crime of robbery would ever stop the police vehicle for the purpose of committing robbery.

After evaluating the evidence of the prosecution, the learned Additional Sessions Judge, Panipat granted the accused the benefit of doubt and acquitted them of the charges framed against them.

Learned State counsel for the appellant is unable to point out any infirmity in the impugned order of the learned Additional Sessions Judge, Panipat.

In this view of the matter, no ground for leave to appeal is made out and the same is hereby declined.

(R S MADAN)
JUDGE

(K S GAREWAL)
JUDGE

November 23, 2006
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